

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

Pro Cooperative

Pocahontas County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2016-AQ- **23**

NO. 2016-SW- **17**

TO: Mark Hambleton
Pro Cooperative
17 3rd Avenue NE
Pocahontas, Iowa 50574

Rolland Svoboda, Registered Agent
Pro Cooperative
17 3rd Avenue NE
Pocahontas, Iowa 50574

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Pro Cooperative for the purpose of resolving open burning and asbestos violations which occurred as a result of the demolition and burning of two buildings owned by Pro Cooperative. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements: **Relating to legal requirements:**

Amber Wolf, Field Office 3
Iowa Department of Natural Resources
Gateway North Mall – 1900 North Grand
Spencer, Iowa 53101
Phone: 712/262-4177

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/725-9572

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II and the rules promulgated or permits issued pursuant to that division; Iowa Code section

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455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. On August 11, 2016, DNR Field Office 3 received a complaint alleging that Pro Cooperative was burning plastic chemical barrels near its facility at 33333 510th Street, Gilmore City, Iowa. The complaint stated the burning had been occurring all week.

2. On August 25, 2016, Amber Wolf, DNR Field Office 3 environmental specialist, investigated the complaint. She observed a large burn pile containing wood and miscellaneous solid waste at the Gilmore City location. Ms. Wolf noted that open burning had occurred at this location on a previous occasion. Ms. Wolf visited Pro Cooperative's office in Gilmore City and was directed to Pro Cooperative's main office in Pocahontas, Iowa.

3. Ms. Wolf continued to the Pro Cooperative office in Pocahontas. She met with Mark Hambleton, Pro Cooperative Credit Manager/Safety Director, and Kyle Kuepker, Pro Cooperative CEO. Mr. Hambleton and Mr. Kuepker stated that two buildings at the Pocahontas facility were torn down, hauled to the Gilmore City location, and burned on August 6, 2016. Mr. Hambleton explained that a Pro Cooperative employee used a loader to push the pile into the hillside and that rotten corn beneath the pile caused the fire to smolder for days. A water truck was brought in on August 9 to extinguish the fire. Mr. Hambleton stated that the two buildings had been inspected for asbestos and that the asbestos had been abated prior to the demolition and fire. Demolition notifications were not submitted to the DNR prior to the demolition. Ms. Wolf explained the asbestos and open burning regulations to Mr. Hambleton and Mr. Kuepker and stated the matter would be referred for further enforcement.

4. On August 25, 2016, Mr. Hambleton emailed Ms. Wolf the documentation for the asbestos inspection and abatement. He also included the landfill receipts for the disposal of the asbestos containing material. On September 1, 2016, Mr. Hambleton informed Ms. Wolf that Pro Cooperative had begun to sort through the remaining solid waste and would take the remaining solid waste to the landfill. He stated that Pro Cooperative would submit the landfill receipts to the field office once the solid waste had been removed.

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5. On September 14, 2016, DNR issued a Notice of Violation letter to Pro Cooperative for the violations discovered during Ms. Wolf's inspection. The letter required Pro Cooperative to dispose of all the remaining solid waste at a sanitary landfill no later than October 15, 2016 and informed Pro Cooperative that the matter was being referred for further enforcement. On November 7, 2016, Pro Cooperative submitted the landfill receipts verifying the removal and disposal of the remaining solid waste from the Gilmore City burn site.

6. On September 19, 2016, Ms. Wolf received the asbestos abatement notification submitted on behalf of Pro Cooperative. The abatement notification did not contain a demolition date. Mr. Hambleton confirmed that a separate demolition notification was not submitted to the DNR for either building. On September 22, 2016 at Ms. Wolf's request Pro Cooperative provided the receipt from the excavator who demolished the two buildings in Pocahontas and transferred the debris to Gilmore City. The receipt indicated that 27 loads from a side dump truck were taken to the Gilmore City burn site and 5 loads from a tandem axle dump truck were taken to the Gilmore City burn site.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). Pro Cooperative demolished and burned two buildings rather than properly disposing of the building debris at a permitted sanitary landfill. The above facts indicate violations of this provision.

3. Iowa Code section 455B.133 provides for the Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC section 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal asbestos NESHAP, found at 40 CFR part 61, subpart M.

4. 40 CFR section 61.145(b)(1) requires written notification of demolition to be submitted to the DNR prior to beginning renovation. The specific requirements for this notification are contained in the subsection. The DNR has no evidence that a notification was ever submitted prior to the demolition of the two buildings and Pro Cooperative stated that demolition notifications were not

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submitted prior to the demolition. The above facts indicate violations of this provision.

5. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

6. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. Pro Cooperative demolished and burned two buildings rather than properly disposing of the building debris at a permitted sanitary landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Pro Cooperative agrees to do the following:

1. Pro Cooperative shall pay an administrative penalty in the amount of \$7,500.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. Iowa Code section 455B.146A provides for more serious criminal sanctions for the air quality violations. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$7,500.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not

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taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Pro Cooperative gained an economic benefit by not properly disposing of the demolition debris of the two buildings it burned rather than disposing of the debris at a sanitary landfill. Pro Cooperative confirmed that 27 side dump truck loads and 5 tandem axle dump truck loads of demolition debris was hauled to the Gilmore City burn site. The average capacity of a side dump truck trailer is estimated to be 25 cubic yards and the average capacity of a tandem axle dump truck is estimated to be 14 cubic yards. One cubic yard of mixed construction and demolition waste yields 500 pounds of solid waste. Therefore, approximately 168.75 tons of demolition debris was transported to the burn site by the side dump trucks and approximately 17.5 tons was transported by the tandem axle dump trucks. The tipping fee and Iowa solid waste fee at the Northern Plain Regional Landfill in Graettinger, Iowa is \$52.91 per ton. Pro Cooperative avoided \$9,854.49 in landfill fees. The distance from Pocahontas to the Northern Plain Regional Landfill is 36 miles and the distance from Pocahontas to the Gilmore City burn site is 14 miles. Pro Cooperative saved 22 miles per trip by taking the debris to the burn site rather than the landfill. It is estimated the cost of transportation for the side dump trailer would have been \$196.00 per trip and the cost of transportation for the tandem axle dump truck would have been \$134.00 per trip for estimated cost savings of \$5,962.00. Additionally, Pro Cooperative avoided the cost of the demolition notifications for the two buildings in the amount of \$200.00. Based on this information, it is estimated that Pro Cooperative gained an economic benefit of at least \$16,016.00. However, the Department has determined to handle this matter administratively and therefore an economic benefit of \$6,000.00 is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. These violations threaten the integrity of the regulatory program because compliance with the asbestos regulations is required of all persons in this state. Based on the above considerations, \$1,000.00 is assessed for this factor.

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Culpability – Pro Cooperative has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Based on the above considerations, \$500.00 is assessed this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Pro Cooperative. For that reason, Pro Cooperative waives the rights to appeal this administrative consent order or any part thereof.

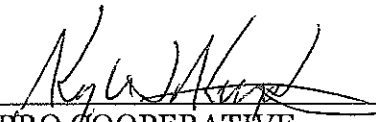
VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 13th day of
December, 2016.



PRO COOPERATIVE

Dated this 15th day of
December, 2016.

Kelli Book; DNR Field Office 3; EPA; VI.C, VII.C.1, VII.C.4